

1 the testimony provided at any evidentiary hearing in this matter.

2 1. On June 27, 2013, Petitioner filed his Timeliness Brief. Petitioner also filed
3 a First Amended Petition ("FAP"). In pleading his claims and addressing the issue of
4 timeliness, Petitioner included, 1) facts and statements from his prior counsel
5 related to Petitioner's representation at trial that are protected by the attorney client
6 privilege and work product doctrine², and 2) confidential medical and mental health
7 records.³ This privileged and confidential information is referenced throughout the
8 Timeliness Brief and the FAP. In addition to these already-filed privileged or
9 confidential documents, this litigation may require additional production of documents
10 and testimony that Petitioner contends are subject to claims of privilege and/or are
11 protected from disclosure by the attorney work product doctrine, or are confidential
12 records relating to Petitioner's mental health. *See John B. v. Superior Court*, 38 Cal. 4th
13 1177, 1198, 137 P. 3d 153, 45 Cal. Rptr. 3d 316 (2006) (holding that the California
14 Constitution's recognition of the inalienable right to privacy extends to medical records,
15 subject to certain limitations). Any such documents shall be subject to this Protective
16 Order.

17 2. All privileged and/or confidential documents as described in Paragraph 1
18 above which are disclosed in this action may be used only for purposes of litigating this
19 habeas corpus proceeding by: a) Petitioner and the members of his legal team, i.e.,
20 lawyers, paralegals, investigators, and support staff, assigned to this action by the Office
21 of the Federal Public Defender, and persons retained by Petitioner's counsel to litigate
22 this matter, including, but not limited to, outside investigators, consultants, and expert
23 witnesses; and (b) Respondent and the members of the legal team, i.e., lawyers,
24 paralegals, investigators, and support staff, assigned to this action by the California

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26 ² Materials and testimony subject to a privilege or the attorney work product
27 doctrine will be referred to collectively hereinafter as "privileged" materials.

28 ³ Personal medical and mental health records which are confidential will be
referred to collectively hereinafter as "confidential" materials.

1 Department of Justice, Attorney General's Office, and persons retained by Respondent's
2 counsel to litigate this matter, including, but not limited to, outside investigators,
3 consultants, and expert witnesses. This Protective Order extends to members of the legal
4 teams and all persons retained by the parties to litigate this matter. All such individuals
5 shall be provided with a copy of this Protective Order. Nothing in this Protective Order
6 shall preclude any person or agency from using any information contained in materials
7 designated as privileged or confidential material in this habeas corpus action if the
8 information was lawfully obtained independently of this habeas corpus action.

9 3. Except for disclosure to the persons and agencies described in Paragraph 2,
10 or unless otherwise ordered by a court, disclosure of the contents of the documents and
11 the documents themselves shall not be made to any other persons or agencies, including,
12 but not limited to, prosecutorial agencies and law enforcement personnel, without the
13 Court's order.

14 4. Documents that Petitioner contends are privileged or confidential shall be
15 clearly designated as such by labeling the documents in a manner that does not prevent
16 reading the text of the document. If the parties disagree about the designation of material
17 as privileged or confidential pursuant to this Protective Order and are unable to resolve
18 the dispute informally, the parties shall follow the procedure for resolving discovery
19 disputes prescribed by Fed. R. Civ. Proc. 37 and Local Rules 37-1 through 37-4.

20 5. All documents designated as privileged or confidential that are submitted
21 to this Court shall be submitted under seal in a manner reflecting their confidential nature
22 and designed to ensure that the privileged or confidential material will not become part
23 of the public record, in accordance with Local Rule 79-5. Any pleading or other papers
24 served on opposing counsel or filed or lodged with the Court that contain or reveal the
25 substantive content of the privileged or confidential matter shall be filed under seal, and
26 shall include a separate caption page that includes the following confidentiality notice or
27 its equivalent:
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TO BE FILED UNDER SEAL

THIS PLEADING OR DOCUMENT CONTAINS CONFIDENTIAL
INFORMATION SUBJECT TO A PROTECTIVE ORDER AND IS NOT
TO BE OPENED NOR ITS CONTENTS DISPLAYED OR DISCLOSED

6. If privileged or confidential documents or documents containing privileged or confidential information are filed with this Court, they shall be filed with the Clerk of this Court in sealed envelopes prominently marked with the caption of the case and the foregoing Confidentiality Notice. The Clerk of the Court is directed to maintain the confidentiality of any documents filed in accordance with the above. Insofar as reasonably feasible, only confidential portions of the filings shall be under seal; and the parties shall tailor their documents to limit, as much as is practicable, the quantity of material that is to be filed under seal. When a pleading or document contains only a limited amount of privileged or confidential content, a party may file a complete copy under seal and at the same time file on the public record an additional, redacted version of the document, blocking out the limited matter comprising the confidential portions.

7. No later than 30 days after this Protective Order is granted, Petitioner shall identify any previously filed or lodged documents that are privileged or confidential. For each such item, Petitioner shall file a redacted version of the item, if feasible, blocking out the privileged or confidential matter; and for each such originally filed item, Petitioner shall supply the clerk with a "To Be Filed Under Seal" caption page and envelope that conform to the privileged caption, and the clerk shall insert the filed or lodged item in the envelope, seal the item, and re-file it.

8. Petitioner's disclosure of documents from trial or appellate counsel's file in this action, and any related testimony by Petitioner or members of Petitioner's defense team at any evidentiary hearing in this case, does not constitute a waiver of Petitioner's rights under the Fifth and Sixth Amendments to the United States Constitution in the event of any retrial.

9. This order shall continue in effect after the conclusion of the habeas corpus

1 proceedings and specifically shall apply (1) in the event of a retrial of all or any portion
2 of Petitioner's criminal case, and (2) in the event of any competency proceedings beyond
3 the instant action. Any modification or vacation of this order shall only be made upon
4 notice to and an opportunity to be heard from both parties.

5 IT IS SO ORDERED.

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8 Dated: August 8, 2013



9 MICHAEL R. WILNER
United States Magistrate Judge

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11 Presented by:

12 /S/ Lauren Collins
13 LAUREN COLLINS
14 Deputy Federal Public Defender